IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.19200 OF 1993
AND W.P.NOS. 19201 and 19266 OF 1993

V. Sankaran .. Petitioner in WP.19200/93
T.L. Narayana Murthy .. Petitioner in WP.19201/93
R. Revathi .. Petitioner in WP.19202/93

-Vs-

1. The Madras Metropolitan Water
Supply & Sewerage Board, Madras 2,
rep. by its Managing Director.

2. The Personnel & Administrative
Manager, Madras Metropolitan
Water Supply & Sewerage Board,
Madras 2.

3. N.N. Pandu,
Revenue Collector, E.C.No.2569,
Area V, M.M.W.S.S.B., Madras 2.

4. S. Sameema Nainar,
Jr. Asst., M.M.W.S.S.Board,
Madras 2.

5. R. Manimeghalai,
Jr. Asst., M.M.W.S.S.Board,
Madras-2.

6. N. Rajavikraman,
Jr.Asst., M.M.W.S.S.Board,
Madras-2. .. Respondents

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioners : Mr.K. Rajkumar

For Respondents 1-2 : Mr.B. Shanthakumar

M.M.W.S.S.B.

:J U D G M E N T

All the three petitioners in these writ petitions have prayed for quashing the proceedings No. M.M.W.S.S.B/P&A/STF/RA1/44416/93 dated 12 .10.1993 so far as it relates to them. Under the aforesaid order, the respondent No.1 while promoting Steno Typists, Typists and Junior Assistants to the post of Assistant in MMWSSB, had reverted the petitioners on account of want of vacancy. Three petitioners and the respondents 4 to 6 were selected for being appointed as Junior Assistants through same selection process. The respondent No.3 was appointed as Revenue Collector. Three petitioners had joined in service earlier than the respondents 4,5 and 6. In the absence of any formal seniority list, one of the petitioners, namely the petitioner in W.P.No.1920 0/93 was temporarily promoted as Assistant for sometime, but subsequently he was reverted. On the basis of the date of joining, a panel was prepared for the year 1990-91 for the post of Assistants wherein the petitioners were shown ahead of the respondents 4 to 6. In January 1991, Thiru V. Sankaran (petitioner in WP.19200/93) and Thiru T.L. Narayana Murthy (petitioner in WP.19201/93) were appointed as Assistants on leave vacancy. Similarly other petitioner was subsequently appointed. However, on 1.10.1993, a seniority list of junior assistants was prepared as per Rule 21(a) of the M.M.W.S.S.B (Special Regulation), according to which seniority has to be counted on the basis of the rank and reservation at the time of initial selection irrespective of the date of joining. In the said seniority list, the petitioners in WP.Nos.19200,19266 and 19201/93 respectively were shown at Serial Nos.115,119 and 120 and respondents 4,5 and 6 were shown at 108,100,101 respectively. In other words, the respondents 4 to 6 were shown as seniors. On the basis of the aforesaid seniority, promotion was effected on 12.10.1993. Accordingly the respondents 4,5 and 6 were promoted. Similarly the respondent No.3 who was a Revenue Collector (another feeder category) was promoted and the three petitioners were reverted for want of vacancy. The aforesaid order of reversion has been challenged. Subsequently, however, the petitioners have been promoted.

2. In the aforesaid background of facts, which are no longer in dispute, the learned counsel appearing for the petitioners has submitted that since the petitioners had been promoted, even though temporarily on the basis of the existing seniority counted on the basis of date of joining, they should not have been reverted in October, 1993, when the seniority list was re-drawn by applying the principles contained in Regulation 21. It is further contended by way of filing a further affidavit that on an earlier occasion when the question of reversion of some engineers came up, the Board had created supernumerary posts instead of reverting such persons, who had been promoted on officiating basis and the same consideration should have been extended to the petitioners.

3. From the counter affidavit filed on behalf of the Board it is apparent that on the basis of the date of joining, since the petitioners had joined earlier than the respondents 4 to 6, they had been promoted and subsequently when the seniority list was drawn up on the basis of Regulation

21, the respondents 4 to 6 were found senior to the petitioners and had to be promoted and the petitioners were reverted for lack of vacancy.

4. Such action of the Board by itself cannot be characterised as arbitrary and illegal. However, the action of the Board in creating supernumerary posts for engineers when such question had cropped up on a different occasion may prima facie appear to be discriminatory. The circumstances under which such orders had been passed are not before this Court. It is of course true that the court while deciding a matter should not give a direction for perpetuating an illegal order and merely because some of the engineers had been protected, similar direction should not be issued.

5. Therefore, while not quashing the order of reversion, it is made clear that the period during which the petitioners had worked as Assistants shall be counted towards service for the purpose of their pension only, but no increment in salary or seniority can be claimed on that basis.

6. Subject to the aforesaid observation, all the writ petitions are disposed of. No costs.

Index : Yes
Internet : Yes
dpk

To

1. The Madras Metropolitan Water Supply & Sewerage Board, Madras 2, rep. by its Managing Director.

2. The Personnel & Administrative Manager, Madras Metropolitan Water Supply & Sewerage Board, Madras 2.